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No. 08-484

Supreme Court, U.S.
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In The

Supreme Court of the United States

ROMONA RENA MAYEAUX,

Petitioner,

v.

CLEAR CREEK INDEPENDENT SCHOOL DISTRICT,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether *St. Mary's Honor Center v. Hicks* requires that an employer's proffered legitimate non-discriminatory reason for making an adverse employment action regarding a minority employee be proven factually inaccurate before the reason may be considered pretext for discrimination. 509 U.S. 502, 517 (1993).

2. Whether the Fifth Circuit created inconsistencies with the nation regarding the application of the Servicemember Civil Relief Act, 50 U.S.C. App. § 501-93 (2008).

LIST OF PARTIES

Petitioner is Romona Rena Mayeaux, Individually.

Respondent is Clear Creek Independent School District.

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PETITION FOR WRIT OF CERTIORARI

This is an employment discrimination case under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq*. (2008) and the Fourteenth Amendment to the United States Constitution. Petitioner Romona Mayeaux filed this lawsuit against her employer Clear Creek Independent School District to recover damages for racial discrimination. Mayeaux was employed as a special education teacher at Creekside Intermediate School for the 2003-04 school year, yet half way through the academic year she was demoted to the position of a teacher's aide or substitute teacher. (CR:689). No reason was given for her demotion. (CR:689).

Following her demotion, her former supervisor recommended that her contract not be renewed for the next school year. (CR:768). A hearing was held on the issue, and the Board voted 6-1 in favor of non-renewal. (CR:548). Mayeaux filed a charge of a violation of Title VII with the Equal Opportunities Commission and received notice of the right to sue. (CR:15).

Defendant moved for summary judgment on November 30, 2006. (CR:416). However, at this time Mayeaux's United States Army Reserve unit was serving in Iraq. (CR:398, 403). Though she asked for a stay pursuant to the Servicemembers Civil Relief Act, the district court denied her request.

Defendant was granted summary judgment on March 26, 2007 and Mayeaux's claims were dismissed with prejudice. (App. B).

OPINIONS AND ORDERS BELOW

The U.S. Court of Appeals for the Fifth Circuit denied Mayeaux's Petition for Rehearing, and its order is unpublished. (App. C). The Court of Appeals for the Fifth Circuit affirmed the order of the district court, and its decision is unpublished. (App. A). The district court is the United States District Court for the Southern District of Texas, and its decision is unpublished. (App. B).

JURISDICTION

Petitioner seeks review and relief from the opinion and the judgment of the U.S. Court of appeals for the Fifth Circuit of May 30, 2008. (App. A). The Fifth Circuit denied a petition for rehearing on July 15, 2008 (App. C). The U.S. Supreme Court has jurisdiction to review cases from federal courts of appeals by virtue of 28 U.S.C. § 1254(1) (2000).

FEDERAL STATUTE AND REGULATIONS INVOLVED

This petition involves racial discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* and the interpretation of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501-93).

STATEMENT OF THE CASE

The Fifth Circuit applied a narrow interpretation of this Court's decision in *St. Mary's Honor Center* in that it required an employer's legitimate non-discriminatory reason for making an adverse employment action to be fabricated by the employer before it allows a jury to infer a discriminatory motive. 509 U.S. 502 (1993). This Court should grant Petitioner's Writ of Certiorari because the Fifth Circuit's holding greatly reduces the effect of *St. Mary's Honor Center* and turns any less-than-perfect employee into a discrimination-proof plaintiff. The Fifth Circuit's holding rejects causes for inferring pretext in an employer's proffered reason, causes used throughout the nation. The Fifth Circuit also inappropriately interpreted the Servicemembers Civil Relief Act by failing to give effect to the intent of the Act.

REASONS FOR GRANTING THE PETITION

In *St. Mary's Honor Center*, this Court held "a reason cannot be proved to be a pretext for discrimination unless it is shown both that the real reason was false, and that discrimination was the real reason." 509 U.S. 502, 515 (internal emphasis and quotations omitted). However, one must wonder if this language means a plaintiff must disprove the facts behind the defendant's proffered reason or merely prove the defendant's reliance on the proffered reason is false.

Circuits have analyzed discrimination cases under the later theory, allowing a jury to infer the proffered reason was pretext for discrimination even if the facts alleged as to the plaintiff's work performance were accurate. This interpretation remains true to Title VII, which states "an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a *motivating factor* for any employment practice, even though other factors also motivated the practice." 42 U.S.C. § 2000e-2(m) (2008) (emphasis added). To do otherwise, to require a plaintiff to disprove all allegations against him, would make any less than perfect employee discrimination proof.[1] *See Dister v. Continental Group, Inc.*,

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[1] In *Venters v. City of Delphi*, moments after the plaintiff's supervisor threatened to fire her for her refusal to go to church with him, the supervisor informed her "that no one's job performance is perfect, and that he would get the proof he needed to

(Continued on following page)

859 F.2d 1108, 1113 (2nd Cir. 1988) (holding "a plaintiff may prevail upon a showing that the employer's given legitimate reason is unworthy of credence, that is, that the reason supplied was not the true reason for the unfavorable employment decision."), *and Griffith v. City of Des Moines*, 387 F.3d 733, 742 (8th Cir. 2004) (Magnuson, J., concurring) (stating "[t]he plain meaning of the statute imposes liability on an employer when an improper consideration is a motivating factor, regardless if other factors also existed.") Thus, even though a proffered reason may be factually accurate, an employer cannot use that reason to escape liability if a plaintiff establishes that his employer considered race, color, religion, sex, or national origin.

Case law establishes three methods in which a plaintiff may show his employer's proffered reason is pretextual and should not be believed: "[a]n employee can show pretext by offering evidence that the employer's reason had no basis in fact, did not actually motivate its decision, or was never used in the past to discharge an employee." *Cehrs v. Northeast Ohio Alzheimer's Research Center*, 155 F.3d 775, 783 (6th Cir. 1998). *See also McNabola v. Chicago Transit Authority*, 10 F.3d 501 (7th Cir. 1993) (citing these same three techniques as methods to establish a lack of credence in a defendant's proffered reason.)

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put the handcuffs on her himself." 123 F.3d 956, 964 (7th Cir. 1997).

Challenging the truth behind the defendant's claim is only one method a plaintiff may utilize to establish his case of discrimination.

However, in the present case, the district court examined the validity of the defendant's proffered reasons only to the extent that a jury could believe such claims were truly based on Mayeaux's actions and not fabricated by Defendant, finding frequently "Plaintiff does not even attempt to disprove the [] allegations." *Mayeaux v. Clear Creek Independent School District*, No. G-05-CV-262, 2007 WL 1004241, *4 (S.D.Tex. March 26, 2007) (unpublished opinion). The Fifth Circuit affirmed the district court's opinion and "found no error in the handling of that issue by the district court." *Mayeaux v. Clear Creek Independent School District*, No. 08-40012, 2008 WL 2228862, *1 (5th Cir. May 30, 2008) (unpublished opinion). This method of analysis foreclosed Mayeaux's ability to show Defendant's reasons were unworthy of credence and pretext for discrimination through two out of three of the techniques explicitly endorsed by the Sixth and Seventh Circuit and is contrary to methods of analysis used in all other circuits.

I. In evaluating only the accuracy of Defendant's proffered justifications, the Fifth Circuit ignored the logic called for in *St. Mary's Honor Society v. Hicks*, which called for a focus on the honesty of an employer's proffered justification, and put itself at odds with all other circuits.

A. In other circuits, a showing of disparate treatment between a plaintiff and similarly situated non-minority employees presents a genuine issue of material fact as to a defendant's honesty. By ignoring the possibility of disparate treatment, the Fifth Circuit's decision prevents all plaintiffs from using this method to establish pretext.

Courts have acknowledged the possibility of a defendant's discriminatory intent even where the defendant's allegations against an employee are based upon factual reasons if there is evidence of disparate treatment among the plaintiff and similarly situated non-minority co-workers. *See Sparks v. Pilot Freight Carriers, Inc.*, 830 F.2d 1554, 1563 (11th Cir. 1993) (stating "[w]here, as here, the employer's asserted justification is that the employee violated a work rule, the employee must prove pretext by showing either that she did not violate the work rule or that, if she did, other employees not within the protected class who engaged in similar acts were not similarly treated.") In cases involving disparate treatment, although the defendant's proffered reason may have underlying truth in regards to the plaintiff's

work performance, when such a reason is presented as a reason for the plaintiff's termination, the reason is false.

Consider *Lynn v. Deaconess Medical Center-West*, 160 F.3d 484 (8th Cir. 1998). There, the plaintiff Lynn, a registered nurse, believed his discharge occurred because of gender discrimination. His employer claimed Lynn's termination occurred because of numerous events which showed "a serious lack of appropriate nursing judgment." *Id.* at 486. These acts included "lay[ing] on a couch watch[ing] television during his shift," "diagnosing a patient" in violation of the facility's policy, "fail[ing] to assist a family member in attaching certain therapeutic equipment to his mother," and "fail[ing] to correctly prepare essential documents for a Patient Conference Team Meeting." *Id.*

Though the Eighth Circuit did not analyze the veracity of these allegations, the court nonetheless reversed the district court's entry of summary judgment because the plaintiff showed disparate treatment between him and his female coworkers. "Lynn presented evidence that Deaconess disciplined female nurses in the Rehab Unit less severely than he was disciplined for conduct that was more egregious than his." *Id.* at 487. While his supervisors were "quick to verbally counsel Lynn and to issue him Letters of Understanding," they did not act the same way towards female employees. *Id.* at 488. In particular, Lynn directed the court's attention to his coworker Mohr. Mohr was seen sleeping while on duty. Only

after her supervisor received four complaints of this was Mohr verbally counseled regarding her behavior. *Id.* Not until her supervisor received five more complaints did Mohr receive a Letter of Understanding addressing her unprofessional conduct. *Id.* at 487. This process took ten months. *Id.* at 488.

By contrast, Lynn received his first two Letters of Understanding after only about two months of first noticing the behavior his supervisors wished to address. *Id.* at 486. The Letters addressed such conduct as "arriving late to work, failing to comply with time-clocking policies, exhibiting a lack of productivity, and complaints about his lack of compassion towards staff and patients." *Id.* He received a third Letter of Understanding a mere month later, which was followed shortly by favorable evaluations of his performance. *Id.*

The Eighth Circuit found Lynn and Mohr were similarly situated in that their "violations were of 'comparable seriousness,'" though the court acknowledged Mohr's violations may have been considered more serious. *Id.* at 488. Even though the claims against Lynn were based on fact, the defendant's disparate treatment demonstrated its reliance on those facts was not credible and may have been pretext for discriminatory intent.

In *Costa v. Desert Palace, Inc.*, the Ninth Circuit relays many instances of disparate treatment occurring between male employees and their one female employee. 299 F.3d 838 (9th Cir. 2002).

> For example, when men came in late, they were often given overtime to make up the lost time; when Costa came in late – in one case, one minute late – she was issued a written reprimand . . . When men missed work for medical reasons, they were given overtime to make up the lost time; when Costa missed work for medical reasons, she was disciplined.

Id. at 845. Costa was eventually terminated after a physical fight between her and coworker, and the male coworker was only suspended for five days. *Id.* at 846. Her employers argued her termination was justified because of her disciplinary history. *Id.*

"Costa did not suggest that she was a model employee." *Id.* Moreover, she did not need to prove such. Her only burden was to show her gender was a "motivating factor" in her employer's decision. 42 U.S.C. § 2000e-2(m). Even if the employer did have valid non-discriminatory reasons to fire an employee, an employer will not escape liability if a protected characteristic of the plaintiff was a motivator of the employer's decision. *Costa*, 299 F.3d at 848. The court found the defendant had committed gender discrimination in terminating Costa. *Id.* at 861. However, "[i]n finding so, the jury did not necessarily reject all of [the defendant's] legitimate complaints about Costa. But even if it credited certain of these explanations, in following the jury instruction, it reasonably found that sex was a 'motivating factor' in the termination." *Id.*

The Tenth Circuit also recognizes disparate treatment among employees as probative of pretext. In *McAlester v. United Airlines, Inc.*, sufficient evidence was found to support a verdict against the defendant when the plaintiff demonstrated white employees were treated more favorably when violating a particular company policy than were minority employees. 851 F.2d 1249 (10th Cir. 1988). Again "[t]he fact that these other employees did not commit the exact same offense as McAlester does not prohibit consideration of their testimony. It is sufficient if these employees did acts of comparable seriousness." *Id.* at 1261. Plaintiff, an African American introduced evidence of four other employees – three white and one Hispanic – who were accused of similar violations. *Id.* Plaintiff and the Hispanic employee were terminated; the white employees were not. *Id.* The court held "there was sufficient evidence from which the jury could rationally conclude United discriminated against McAlester because of his race." *Id.* at 1260. It was of no moment to the court that McAlester actually had violated company policy. *Id.*

As explained more fully below, in the present case, by ignoring the value of disparate treatment, the Fifth Circuit would give no merit to evidence showing similarly situated employees did not attend required meetings or use the telephone during class time and were not terminated for these actions. A disparity exists between the Fifth Circuits and other parts of the county regarding appropriate evidence to

present to dispute the validity of a defendant's proffered justifications.

B. In other circuits, determining an employer's proffered reasons to be implausible, absurd, or unwise presents a genuine issue of material fact as to a defendant's honesty. By not considering the plausibility of a defendant's proffered reason, the Fifth Circuit's decision prevents all plaintiffs from using this method to establish pretext.

"The more idiosyncratic or questionable the employer's reason, the easier it will be to expose it as a pretext." *Loeb v. Textron*, 600 F.2d 1003, 1012 n.6 (1st Cir. 1979). Other courts have determined the existence of possible pretext when they have found the reason the defendant purported to rely upon to be an implausible justification for an adverse employment action. "The implausibility of the alleged justification is sufficient to create a genuine issue of material fact was to whether [defendant]'s articulated reason is pretextual." *Sparks*, 830 F.2d at 1564. *See also DeMarco v. Holy Cross High School*, 4 F.3d 166, 171 (2nd Cir. 1993) (determining "a plaintiff may be able to put into question the genuineness of the employer's putative non-discriminatory purpose by arguing that the stated purpose is implausible, absurd or unwise.") In *Sparks*, the defendant alleged it fired its employee for failing to follow the company's rule regarding sick days. 830 F.2d at 1563. Though

the plaintiff informed her manger's secretary that she was sick and would not be coming in to work, the defendant argued that company policy regarding sick time required the employee to "initiate the call in which the notice is given." *Id.* Since the plaintiff gave her notice to the company during a phone call initiated by her manger's secretary to discuss unrelated matters, the defendant argued notice was given in violation of the company's rule. *Id.* The Eleventh Circuit, however, found this reason to be unworthy of credence as it was implausible. *Id.* at 1564. The plaintiff argued a more reasonable interpretation of the rule required only "that employees notify [their employer] that they are going to be out sick that day prior to the start of their shift." *Id.* at 1563. This interpretation was found to be less absurd. "[V]iewing the evidence in the light most favorable to Sparks, Pilot Freight's construction of its work rule . . . could reasonably be found to be implausible and unworthy of credence." *Id.* at 1564.

In *Cehrs*, the defendant alleged it fired the plaintiff for failure to follow company policy requiring employees to use specific forms to extend a leave of absence. 155 F.3d 775. The plaintiff never argued that she did file the required form asking to extend her leave, but she argued her employer knew of her need to extend leave and the required form was not available to her. *Id.* at 784. Despite the truth of the defendant's proffered non-discriminatory reason, the Sixth Circuit held termination on this account was illegitimate. The underlying factor was a miscommunication

between the parties and an implausible reason to terminate an employee. *Id.* As such, the reason, although accurate as to the plaintiff's conduct, was unworthy of credence as a legitimate justification for the defendant's action and a jury could infer such an excuse was pretext of discrimination. *Id.*

Similarly in *Criado v. IBM Corp.*, the defendant alleged it had fired its employee for absenteeism. 145 F.3d 437 (1st Cir. 1998). While the plaintiff had been absent from work, the court found a jury could infer this explanation was merely pretext for discrimination, holding "IBM's position ignore[d] its duty to accommodate under the ADA." *Id.* at 444. The absenteeism was the result of miscommunications between plaintiff's doctor and IBM. "If the termination was the result of a communication mistake Criado should have been reinstated once her physician explained her condition and prognosis and asked for additional leave." *Id.* The court found the defendant's stated reason for the plaintiff's termination to be illegitimate and therefore it was possible for a jury to infer discriminatory intent. *Id.*

In the present case, by failing to evaluate the plausibility of Defendant's proffered reasons, the Fifth Circuit set themselves apart from other circuits.

C. In other circuits, the late arrival of an employer's proffered reason presents a genuine issue of material fact as to a defendant's honesty. By not considering the timing of a defendant's proffered reason, the Fifth Circuit's decision prevents all plaintiffs from using this method to establish pretext.

Courts and juries may be "disquieted . . . by an employer who 'fully' articulates its reasons for the first time months after the decision was made." *Tyler v. Re/Max Mountain States, Inc.*, 232 F.3d 808, 813 (10th Cir. 2000). The late appearance of a legitimate non-discriminatory reason may allow a jury to infer the reason was invented after the firing or other adverse employment action as an attempt to avoid liability. In *E.E.O.C. v. Sears Roebuck and Co.*, an interviewer claimed that although she had wanted to hire the plaintiff, her decision was overruled by the store's manager. 243 F.3d 846, 853 (4th Cir. 2001). However, the interviewer did not disclose this turn of events to the plaintiff or to the one preparing the response to the plaintiff's EEOC charge. *Id.* Indeed, this was not disclosed until two and a half years after the interview during a deposition. *Id.* This struck the court as "curious." *Id.* Given the interviewer's multiple opportunities over two and a half years to disclose the truth, the court held "a trier of fact would certainly be entitled to infer that this explanation is nothing more than a post hoc rationale, invented for the purpose of litigation" and thus "not a legitimate explanation for [the defendant's] decision." *Id.*

In the present case, in failing to examine the timing of the appearance of certain of Defendant's proffered justifications, the Fifth Circuit created a discrepancy between themselves and these circuits.

D. In other circuits, an employer's failure to make an informed decision regarding an allegation against an employee presents a genuine issue of material fact as to a defendant's honesty. By not evaluating the decision making process of a defendant, the Fifth Circuit's decision prevents all plaintiffs from using this method to establish pretext.

In *Smith v. Chrysler Corp.*, the plaintiff suffered from narcolepsy and requested a shift change because he had difficulty staying awake during his drive home after work. 155 F.3d 799 (6th Cir. 1998). In response to his request, the plant assembly superintendent reviewed the plaintiff's employment records and discovered on a self-administered medical history form that he had responded "no" when asked if he suffered from unusual fatigue or tiredness as well as his narcolepsy diagnosis. *Id.* at 803-04. The superintendent then fired the plaintiff. *Id.* at 804. The plaintiff sued alleging disability discrimination. *Id.* As a legitimate, non-discriminatory reason for his termination, the defendant argued the plaintiff was fired for lying on his medical history form; yet the plaintiff argued his employer's "investigation was ill-informed and shoddy, as [the superintendent] failed to make

any attempt to personally interview him or his treating physicians, or attempt to educate herself on the subtle nuances surrounding sleeping disorders in general and his condition in particular" thus the defendant could not have an honest belief that the plaintiff lied. *Id.*

The Sixth Circuit determined whether or not the defendant had an honest belief hinged on the validity of its investigation into the facts surrounding the situation. A defendant is not required to conduct a perfect investigation. *Id.* at 807. "Rather the key inquiry is whether the employer made a reasonably informed and considered decision before taking an adverse employment action." *Id.* The court's decision reflects a desire to find a middle ground between micromanagement and blind acceptance. *Id.* The court determined the defendant's decision was made "based solely on [the superintendent] personal opinion that people with narcolepsy suffered from unusual fatigue." *Id.* at 808. The superintendent did not "attempt[ ] to validate her personal opinion by inquiring about whether narcoleptics suffer from unusual fatigue." *Id.* Because the decision was grounded in the superintendent's ignorance, the court held the defendant "could not have reasonably believed that Smith had lied (based solely on the comment of the union representative) without further investigation." *Id.* The Eleventh Circuit agrees with this method of establishing pretext and requires a defendant to base their decision on "particularized facts using the best

available objective evidence." *Lowe v. Alabama Power Company*, 244 F.3d 1305, 1308 (11th Cir. 2001).

The Fifth Circuit, in blindly accepting the Defendant's methods of investigation, created a discrepancy in the interpretation of discrimination law among the circuits.

E. In other circuits, consideration of an employer causing the working conditions which caused an employee's poor performance presents a genuine issue of material fact as to a defendant's honesty. By not evaluating the causation of an employer's poor performance, the Fifth Circuit's decision prevents all plaintiffs from using this method to establish pretext.

In *Austin v. Ford Model's, Inc.*, the plaintiff's work performance suffered when the defendant transferred the plaintiff's assistant and did not provide a replacement. 149 F.2d 148 (2nd Cir. 1998). The transfer resulted in the plaintiff, and African American, having to perform "unnecessary clerical work involving extra hours without additional monetary compensation," opposed to non-African American employees who received "overtime pay for their extra work." *Id.* at 151. When the plaintiff asked for a replacement assistant to take the "clerical overload" off of her and avoid working overtime, she was offered the "choice between receiving a 15% pay raise or having an assistant but taking a pay reduction." *Id.*

Her supervisor made no attempts to adjust the plaintiff's workload; and eventually, the plaintiff "stopped working the extra hours." *Id.* As a result of her actions, "the cash flow in the company suffered and a crisis developed." The plaintiff was subsequently terminated, allegedly for failure to do her job "in a competent manner" leading to the deterioration of accounts receivable. *Id.* The district court dismissed the plaintiff's claim of discrimination.

The plaintiff did not argue with the facts behind the defendant's allegations against her. Rather, she argued the defendant had "imposed more onerous employment conditions upon [the plaintiff] than upon other, white employees." *Id.* The defendant had created a working condition the plaintiff could not live up to and then fired her for her, predictable, failure to do so. In deciding this case, the Second Circuit determined the allegation against the plaintiff could be "a legitimate, non-pretextual, non-discriminatory reason" for her termination; yet the court vacated the district court's dismissal of her discrimination claims holding the working conditions to be non-compliant with Title VII and the ADEA. *Id.* A jury can infer pretext for discrimination when a defendant created a working condition which sets an employee up for failure.

In the present case, the Fifth Circuit did not consider the factors caused by Defendant which led to what Defendant perceived as Mayeaux's performance issues.

F. In other circuits, affidavits and testimony of a plaintiff and witnesses present a genuine issue of material fact. By making credibility assessments at summary judgment, the Fifth Circuit's decision limits a plaintiff's access to available evidence.

Summary judgment is appropriate only when "discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." FED. R. CIV. PRO. R. 56(c) (2008). "[A]ny doubt as to the existence of a genuine issue for trial should be resolved against the moving party." *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 n.2 (1986). In the present case, the Fifth Circuit determined Mayeaux had established no genuine issue of material fact and that she had presented no "substantiated evidence" to corroborate her claims even when faced with Mayeaux's own sworn testimony, the sworn testimony and affidavits of witnesses, and admissions of party opponents, all of which confirm her version of the events. (CR:892, 894-95).

By contrast, other circuits recognize "it remains for a jury [ ] to decide whether and to what extent her account of the events is accurate" recognizing that a court cannot make credibility assessments at summary judgment and the presumption in favor of the non-moving party prevents summary judgment in the face of conflicting evidence. *Venters v. City of Delphi*,

123 F.3d 956, 962 (7th Cir. 1997). *See also Aman v. Cort Furniture Rental Corp.*, 85 F.3d 1074, 1080 (3rd Cir. 1996) (holding "when determining whether the moving party has proven the absence of a genuine issue of material fact, the facts asserted by the non-moving party, if supported by affidavits or other evidentiary material, must be regarded as true.") In ignoring the testimony and affidavits of Mayeaux's witnesses and the testimony of Mayeaux herself, the Fifth Circuit requires plaintiffs to live up to a standard to avoid summary judgment higher than a plaintiff in any other circuit.

G. In other circuits, casting significant doubt on some of a defendant's proffered reasons creates a genuine issue of material fact as to a defendant's honesty in regards to all other proffered reasons. By requiring a plaintiff to disprove all of a defendant's proffered reasons, the Fifth Circuit places a higher burden on plaintiffs.

In *Tyler*, the defendant presented four reasons for which it would not give the plaintiff a franchise of its business. 232 F.3d 808. Thus the burden then shifted to the plaintiff to show these reasons were not the true reasons for the defendant's refusal. The Tenth Circuit acknowledged "as a general rule, an employee must proffer evidence that shows each of the employer's justifications are pretextual." *Id.* at 814. However, the court also acknowledged that when a

plaintiff shows an employer is lying about one proffered reason, a defendant's honesty as to all other reasons may also be called into question. "This is but common sense: if a person is shown to be a liar in an outrageous manner or is shown to have lied about a number of issues, the inference that the person is non-credible, and should not be believed as to other issues, is a reasonable one." *Id.* (quoting *Chapman v. AI Transport*, 229 F.3d 1012, 1050 (11th Cir. 2000) (Birch, J., concurring in part and dissenting in part)).

Other circuits agree. "[A] multitude of suspicious explanations may itself suggest that the employer's investigatory process was so questionable that any application of the 'honest belief' rule is inappropriate." *Smith*, 155 F.3d at 809. There, the Sixth Circuit determined in some cases, doubt cast on one of the defendant's alleged motivations would "translate into an inference that the true motivation behind [the plaintiff's] discharge was his disability." *See also Russell v. Acme-Evans Co.*, 51 F.3d 64, 70 (7th Cir. 1995) (holding "[t]here may be cases in which the multiple grounds offered by the defendant for the adverse action of which the plaintiff complains are so intertwined, or the pretextual character of one of them so fishy and suspicious, that the plaintiff could withstand summary judgment" even if the defendant does not cast doubt on each of an employer's proffered justifications.) The Third Circuit has also determined "the factfinder's rejection of some of the defendant's proffered reasons may impede the employer's credibility seriously enough so that a factfinder may rationally

disbelieve the remaining proffered reasons, even if no evidence undermining those remaining rationales in particular is available." *Fuentes v. Perskie,* 32 F.3d 759, 764 n.7 (3d Cir. 1994).

II. When applying the methods used in other circuits to the facts of the present case, Mayeaux presents a genuine issue of material fact as to whether the justifications offered by Defendant are pretext for discrimination.

A. Claiming Mayeaux failed to implement an appropriate point system is pretext for discrimination because such a claim goes against the great weight of the evidence and Defendant created a situation in which Mayeaux was destined to fail.

Defendant alleged it terminated Mayeaux because she failed to implement an appropriate point system to reward and punish her students. (CR:444). The district court found Mayeaux "present[ed] absolutely no evidence that the point system was appropriate and in line with the requirements that were expected and previously discussed with her." (App. B9). The district court relied on Defendant's testimony stating Mayeaux's system "did not include specific rewards and consequences." (CR:485). However, the facts behind this claim show criticism of the adequacy of Mayeaux's point system is unsupported

by evidence and Defendant created a situation in which Mayeaux was destined to fail.

First, an email from Mayeaux to her supervisor reveals a point system with definite rewards for students who misbehave. (App. D1-2). Defendant presents nothing specific to show Mayeaux's system was inappropriate other than its own self-serving testimony and an example of a point system designed to inform a student of how rewards and consequences are meted out. (CR:485; App. D2-6). Kyle's model system is near incomprehensible to present counsel and one must wonder how such a system is more clearly understandable for emotionally disturbed children than Mayeaux's straightforward list of rewards for good behavior. Though the court's role is not to second guess an employer's business decision, here, the district court made a credibility decision regarding the conflicting evidence – Mayeaux's evidence of a point system and Defendant's self-serving testimony that Mayeaux's system was inappropriate. As such, this is a matter inappropriate for summary judgment because it involved, not a business decision, but a credibility assessment. When the evidence is viewed in the light most favorable to Mayeaux, it is clear Mayeaux had a system comprehensible to her students which served the purpose of enforcing good behavior. Thus the court's finding that Mayeaux "present[ed] absolutely no evidence" was an inappropriate credibility determination. (App. B9). As stated above, "it remains for a jury [ ] to decide whether and

to what extent her account of the events is accurate." *Venters*, 123 F.3d at 962.

Second, like the plaintiff in *Austin* who received no help from her supervisor, here emails between Mayeaux and Kyle show an offer to help but no indication the promise came to fruition. (App. D1-6). After Mayeaux shared with Kyle the rewards system already in place in her classroom, Defendant provided no evidence showing Kyle fulfilled her promise to help other than by providing Mayeaux with the complicated model reward and consequence system. A jury may see Defendant as being disingenuous to promise to help an employee, providing little to no guidance, and then using that issue as an excuse for termination. As in *Austin* a jury can infer reliance upon this reason was pretext for a discriminatory motive. 149 F.2d 148. The Fifth Circuit's decision in this case puts it at odds with nearly all other circuits by forbidding an inference of pretext through attempts to show the defendant's efforts to sabotage the plaintiff's performance by and requiring a higher level of proof for the plaintiff.

B. Claiming Mayeaux misused the library is pretext for discrimination because the excuse is implausible, Defendant created a situation in which Mayeaux was destined to fail, and the first complaint arose after Mayeaux's demotion.

Defendant alleged Mayeaux was terminated for allowing her students to misuse the library, and the

district court found there was no "question of fact which would allow a factfinder to determine that this proffered reason for termination was pretextual." (CR:449-50; App. B10). The Fifth Circuit affirmed. In doing so, the Fifth Circuit put itself at odds with nearly all other circuits by ignoring the implausibility of a defendant's excuse, the fact that late arrival of complaints may show the employer is disingenuous, and a defendant's attempts to sabotage an employee's performance.

"The more idiosyncratic or questionable the employer's reason, the easier it will be to expose it as a pretext." *Loeb*, 600 F.2d at 1012 n.6. The district court and Fifth Circuit should have examined, in harmony with other circuits, whether the implausibility of these excuses create a genuine issue of material fact as to the reliability of the defendant's reason and therefore make summary judgment inappropriate. Defendant argued purported misuse of the library by Mayeaux's students was justification for her termination. (CR:449-50). The district court found "Plaintiff inappropriately allowed students to go to the library with no supervision, no assignment, no hall pass, and for multiple periods." (App. B10). However, upon a close examination, this reason is an implausible excuse for Mayeaux's termination.

Defendant argued Mayeaux's use of the library violated school policy. The only library policy established through evidence is "[teachers] can't send more than three ever from a class . . . " (CR:510). However, Hutt, the librarian, testified Mayeaux never sent

more than three students to the library at a time. (CR:510). The only problem with Mayeaux's use of the library, according to Hutt, was that Mayeaux's special needs students "just made [her] very nervous" without more skilled supervision because she "didn't really know how to handle those students." (CR:510). It is a genuine issue of material fact whether the librarian's anxiety around handicapped children is a valid reason to terminate the employment of a special education teacher.

Moreover, this reason, like the previous reason, also demonstrates the Defendant's attempts to sabotage Mayeaux's performance by creating the situation of which it complains. As in *Austin*, a working condition created by Defendant led to this complaint against Mayeaux. Kyle, as Mayeaux's supervisor, administered to one of Mayeaux's students a "chill out pass," which allowed him to leave the classroom at his own discretion. (CR:841). Though Hutt complained about Mayeaux's students being in the library without supervision or a particular assignment, a genuine issue of material fact remains as to whether the students were in the library with the permission of Mayeaux or Kyle. Further, Kyle knew of Mayeaux's use of the library as early as November 21, 2003. (CR:679). In an email to Kyle detailing rewards given to her students, Mayeaux told Kyle she gives her students "free library time" "as an incentive for great behavior and academic progress." (CR:679). There is no evidence suggesting Kyle said anything to Mayeaux to lead her to believe this was against

school policy or even frowned upon. A jury could conclude Defendant's ignoring this issue made Defendant's subsequent reliance on this reason to be pretext for discrimination.

Lastly, in other circuits, the late arrival of this excuse would cast doubt on Defendant's honesty and lead a jury to conclude "this explanation is nothing more than a post hoc rationale." *E.E.O.C.*, 243 F.3d at 853. Allegations of library misuse did not appear in the record until February 3, 2004, one month after Mayeaux had suffered her first demotion and more than two months after Kyle received knowledge of Mayeaux's manner of use of the library. (CR:694). Library misuse was never discussed, either in Mayeaux's Professional Intervention Plan, or the numerous memos from her supervisors. (CR:569-70, 576-84, 597-600, 621-31). The late arrival of this excuse would, in the Fourth and Tenth Circuits, provide a genuine issue of material fact preventing a defendant's victory at summary judgment.

C. Claiming Mayeaux improperly restrained a student is pretext for discrimination because Defendant did not make a reasonably informed decision regarding the alleged restraint and because such a claim goes against the weight of the evidence.

Next, Defendant explains Mayeaux was terminated for failing to document an alleged improper restraint of a student; however, Mayeaux has

consistently denied this accusation. (CR:444). The district court determined even if the claim against Mayeaux was false – even if she had committed an improper restraint of a student – "[g]iven the thorough investigation made by [Defendant] into the incident, no reasonable factfinder could find that it acted with a discriminatory motive, even if he found that [Defendant] was wrong about the way the incident happened." (App. B11). According to the district court, this supposed honest belief in the allegations against Mayeaux insulated Defendant from an inference of discrimination. However, the district court and the Fifth Circuit failed to consider that the low quality of the investigation conducted could not have led to an honest belief and that a ruling of summary judgment goes against the weight of the evidence.

Much like in *Smith*, Defendant's perception of the event led to Mayeaux's termination rather than the event itself. 155 F.3d 799. The investigation praised by the district court was nothing more than Defendant's preconceived notions. Indeed, Defendant's witness even admits that had the events transpired as Mayeaux had alleged, the incident would not have been considered a restraint. (CR:520). However, neither the Defendant nor the district court gave any credence to this portion of Defendant's evidence or the interpretation of the events given by Mayeaux herself. Instead, the district court considered the word of a witness who was not even present at the time of the incident to be definitive and

dismissed Mayeaux's own interpretation outright. (CR:519-21; App. B11).

Because of the investigation, which amounted to only the opinion of an absent witness and the disregard for Mayeaux's interpretation, the Fifth Circuit has set itself at odds with all circuits that require a Defendant to have an honest belief in the proffered justification and all circuits that examine the validity of a defendant's investigation of a claim against an employee.

D. Claiming Mayeaux misused her aides is pretext for discrimination because such a claim goes against the great weight of the evidence.

Defendant's fourth proffered reason for terminating Mayeaux was that she had misused her aides. (CR:444). The district court accepted the testimony of Defendant's witness, found Mayeaux had "offered no evidence in support" of her denial of this claim, and granted summary judgment. (App. B11). However, in doing so, the district court ignored Mayeaux's rebuttal witness who brought into question the credibility of Defendant's only witness to this point. (CR:536-37, App. E1-2).

Another circuit would have followed the law laid down by this Court and the federal rules and determined the sworn testimony of Mayeaux's rebuttal witness addressed the credibility of Defendant and created a genuine issue of material fact. "[A] district

court generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented." *Agosto v. INS*, 436 U.S. 748, 756 (1978). Another circuit would have examined the testimony of Mayeaux's witness – who said Defendant's witness had been lying, is not an honest person, was angry with Mayeaux, and had a motive to lie for Defendant – and considered it to be truthful in accordance with established law regarding the evaluation of evidence upon summary judgment. *Aman*, 85 F.3d 1074. (CR:536-37, App. E1-2). Thus the Fifth Circuit interpretation differs from all other circuits by ignoring a nonmovant's evidence at summary judgment and making improper credibility assessments.

E. Claiming Mayeaux altered student schedules is pretext for discrimination because the excuse is implausible and Defendant created the situation in which Mayeaux would fail.

Defendant next claims Mayeaux was terminated for altering her students' schedules. (CR:443). The trial court determined "[t]his is unacceptable since the educational plans for special education students are highly regulated by the State." (App. B12). Kyle's testimony reflects these regulations, stating children in a special education program may be "out of the placement that is on their scheduled services page for up to 10 days." (CR:485). Yet Defendant neither alleges nor offers evidence tending to prove Mayeaux

had any student out of placement for 10 or more days in violation of the state regulation. With due respect to the district court's outrage, merely stating such a course of action is unacceptable does not mean the action occurred or, if it did, was the fault of Mayeaux.

Rather, the evidence does show one of Mayeaux's students was out of placement for approximately the first month of school. (CR:476-77). However, from the circumstances surrounding this student's schedule, a jury could determine reliance on this reason to terminate Mayeaux is pretext for discrimination. Evidence shows the schedule of the student in question was altered, placing him in Mayeaux's class, by the school's administration while Mayeaux was away from school. (CR:835). Defendant presents no evidence showing Mayeaux was informed of this change until she herself brought the scheduling error to the attention of the administration. (CR:476-77). Mayeaux also presents the affidavit of a colleague, the teacher of the class Mayeaux had been sending her student to, which states the student in question was, in fact, scheduled to be in his class at the beginning of the school year. (CR:863). Moreover, Mayeaux was told by Kyle that she would "help rectify this situation." (CR:835).

When examining the factors surrounding this incident – Kyle's assurance of help and Mayeaux's supervisors' failure to inform her of the change – a jury could easily determine this is an implausible reason, like the defendant's reliance on the miscommunication in *Cehrs* and *Criado*. *See* 155 F.3d 775

and 145 F.3d 437. Also like in *Austin*, a jury could determine Defendant created this situation by failing to inform Mayeaux of the schedule change. *See* 149 F.2d 148. From these determinations, a jury could infer reliance on this reason was pretext for a discriminatory motive.

F. Claiming Mayeaux's students had poor performance is pretext for discrimination because such a claim is against the great weight of the evidence.

Defendant next alleges Mayeaux was terminated because her students were performing poorly. (CR:444). However, in accepting this reason, the district court made a credibility assessment inappropriate upon summary judgment in any other circuit. Much like Defendant's claim of aide misuse, in finding no genuine issue of material fact regarding her students' grades, the district court ignored the evidence of Mayeaux's witness who testified and signed an affidavit stating Mayeaux's aide had altered students' grades at the request of Mayeaux's supervisors. (CR:537; App. E1-2). Other circuits require trial courts to consider affidavits and evidentiary material of the non-moving party as true. *See Aman*, 85 F.3d at 1080. Other circuits recognize it is the role of the jury to determine whose account of the events are credible. *See Venters*, 123 F.3d at 962. Therefore, the district court's grant of summary judgment in the present case and the Fifth Circuit's affirmation is inconsistent with the law of other circuits.

G. Claiming Mayeaux missed staff meetings is pretext for discrimination because such a claim demonstrates disparate treatment among similarly situated non-minority employees and is an implausible reason to terminate an employee.

Defendant also alleges Mayeaux was terminated because she failed to attend required staff meetings. (CR:429). However, missing staff meetings was also done by Bryant, a fellow special education teacher at Mayeaux's school. (CR:531). Bryant testifies to the busy schedule of teachers, to the large quantities of meetings and the other school obligations of many teachers, saying "we don't always get to be able to get together at times either," and "I don't remember if I missed any [staff meetings], but I don't remember if I made any either." (CR:531). Yet Mayeaux was instructed to attend all meetings with "no exceptions." (CR:597-98). Bryant and Mayeaux were both special education teachers at Creekside Intermediate with the same supervisor. (CR:530). They have engaged in the same conduct. Mayeaux is African American whereas Bryant is white. A jury could find their actions and their positions make them similarly situated. Yet the disparate treatment between Mayeaux and her coworker was ignored by the district court and the Fifth Circuit, and summary judgment was granted and affirmed because Mayeaux had not brought forth enough evidence to dispute the facts behind these allegations. (App. B13). This method of analysis ignores the reality of disparate

treatment in the Defendant's school which would be a genuine issue of material fact as to the employer's honesty in the Eighth, Ninth, Tenth, and Eleventh Circuits.

Further, reliance on this reason may also be determined by a jury to be implausible and therefore pretext for discrimination. Defendant was only able to testify that Mayeaux missed one meeting. (CR:473). As Mayeaux explained to her supervisor a unique situation arose at the time of the staff meeting which forced Mayeaux to make a judgment call. (CR:589). A student was misbehaving all day, and nothing Mayeaux did helped the student. After school let out for the day, Mayeaux saw the student's father, who was usually out of town for long periods of time. Because of the father's schedule, Mayeaux suspected this may be the only opportunity she would have to speak with the student's father regarding his behavior thought she was acting in her student's best interest when she chose to speak to his father. Kyle disagreed; yet no disciplinary action was taken against Mayeaux until three months later; and Defendant did not submit evidence that Mayeaux had missed subsequent meetings. (CR:589, 689). From these suspicious circumstances, a genuine issue of material fact exists as to the plausibility of Defendant's excuse. Such an issue would be enough to prevent summary judgment in several circuits, and in ignoring this evidence, the Fifth Circuit again created a discrepancy between the circuits.

H. Claiming Mayeaux misused her cell phone is pretext for discrimination because such a claim demonstrates disparate treatment among similarly situated non-minority employees and this claim did not arise until after Mayeaux had received notice of non-renewal.

Finally, Defendant argues Mayeaux was terminated for using her cell phone during class. (CR:429). Again, this claim may be pretext for discrimination because of disparate treatment between Mayeaux and other non-minority teachers. Also, from the late arrival of this justification, a jury may infer this excuse is only pretext for discrimination.

Evidence reveals the phone calls Mayeaux made were to parents of students in Mayeaux's class to keep parents informed about their children with special needs. (CR:525, 527). Evidence also reveals similar conduct by Bryant. (CR:531). Bryant testified she and her students often call parents during class time to let parents know about the child's day. (CR:531). Both Bryant and parents of Mayeaux's students testified that these phone calls were appreciated. (CR:525, 527, 531). Because both teachers made it their practice to call parents throughout the day, Defendant's reliance on this claim shows disparate treatment in the school between minority and non-minority teachers and would allow a jury to infer a discriminatory motive.

Moreover, the late arrival of this excuse may also allow a jury to infer the reason is pretextual. *See E.E.O.C.*, 243 F.3d at 853. Neither Mayeaux's Professional Intervention Plan, which detailed what Defendant perceived to be Mayeaux's performance issues, nor numerous memos from Mayeaux's supervisors mentioned cell phone misuse. (CR:569-70, 576-84, 597-600, 621-31). Allegations of Mayeaux inappropriately using her phone did not appear in the record until May 19, 2004, after Mayeaux had been sent notice of nonrenewal, thus giving her no time to correct any perceived problem. (CR:715-17). The late arrival of this excuse would, in other circuits, allow a factfinder to infer an employer's dishonesty and certainly deprived Mayeaux of any opportunity to correct any perceived problem with her performance.

III. The Fifth Circuit's interpretation of the Servicemembers Civil Relief Act created a discrepancy in the application of this Act

On February 21, 2006, Mayeaux filed Plaintiff's Response to Joint Motion for Continuance. (CR:397-407). In this Response, Mayeaux informed the court her unit of the United States Army Reserves was to be mobilized and deployed to Iraq beginning March 13, 2006. (CR:398, 403). Mayeaux asked for "relief pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501-93." (CR:398)).

Under the Servicemembers Civil Relief Act, a court "shall, by application by the servicemember,

stay the action for a period of not less than 90 days." 50 U.S.C. App. § 522(b). An application for a stay must include "[a] letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear" and "[a] letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents the appearance and that military leave is not authorized for the servicemember at the time of the letter." 50 U.S.C. App. § 522(b)(2).

This Court held the act must be "liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation." *Boone v. Lightner et al.*, 319 U.S. 561, 575 (1943). Generally, the party opposing a stay has the burden to demonstrate the rights of the servicemember will not be prejudiced by his absence by clear and convincing evidence. *Glick Cleaning & Laundry v. Wade*, 172 S.W.2d 929, 931 (Ark. 1943). However, absence when one's rights are being determined is usually prima facie prejudicial. *In re Marriage of Brazas*, 662 N.E.2d 559 (Ill. App. 2 Dist. 1996). There, the court would not "condone the actions of petitioner's counsel in setting a hearing date while respondent was serving on reserve duty in light of the protections afforded military personnel by the [Servicemembers Civil Relief Act]." *Id.* at 561. The court is to keep the effect of the Act in mind "which is to

protect civil rights of a person who, on account of his service in the armed forces, cannot be present at a trial or proceeding" when evaluating whether or not to grant a servicemember a stay. *Bowman v. May*, 678 So.2d 1135, 1136 (Ala. Civ. App. 1996) (quoting *Palo v. Palo*, 299 N.W.2d 577, 579 (S.D. 1980)).

Though granting a stay is within the trial court's discretion, this discretion is not unlimited. "A trial court abuses its discretion when its actions are unreasonable, arbitrary, or unconscionable." *Henneke v. Young*, 761 N.E.2d 1140, 1142 (Ohio App. Dist. 2001). "The discretion lodged in the trial judge has been interpreted so as to prevent a party from using the provisions of the Act to shield his own wrong doing or lack of diligence." *Booker v. Everhart*, 234 S.E.2d 46, 52 (N.C. App. 1 1997) (judgment reversed on other grounds).

In the present case, Plaintiff's Response to Joint Motion for Continuance was a communication which set forth facts stating how her military orders affected her ability to appear in court and that she would not return from Iraq until March 2007. (CR:397-401). Therefore, the first requirement of the Act is met. Attached to the motion were her orders, which fulfills the second requirement, a communication from the servicemember's commanding officer. (CR:403).

Some courts have held there are, at times, no reasons to draw distinctions between stays and continuances. *See Ex Parte Taylor*, 24 So.2d 217, 219

(Ala. 1945). However, the facts of the present case present a practical distinction between a stay and a continuance – a stay would have prevented Defendant from filing its Motion for Summary Judgment until Mayeaux's return from Iraq. Her presence would have helped her attorney prepare their fight against Defendant's motion; but because her case was not stayed, she was not afforded this opportunity.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that certiorari be granted.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 08-40012
Summary Calendar

ROMONA RENA MAYEAUX,

Plaintiff-Appellant

v.

CLEAR CREEK INDEPENDENT SCHOOL DISTRICT,

Defendant-Appellee

Appeal from the United States District Court
for the Southern District of Texas
(3:05-CV-262)

(Filed May 30, 2008)

Before WIENER, GARZA, and BENAVIDES, Circuit Judges.

PER CURIAM:*

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* Pursuant to the 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not

(Continued on following page)

Plaintiff-Appellant Romona Rena Mayeaux appeals from the district court's summary judgment dismissing with prejudice her race-based employment discrimination case against Defendant-Appellee Clear Creek Independent School District ("CCISD"), and also appeals from the district court's denial of her motion for reconsideration. On appeal, Mayeaux contends that the district court erred in concluding that she had failed to establish the presence of a genuine issue of material fact as to whether CCISD's reasons for not renewing her teaching contract were pretext for a racially discriminatory motive, and also erred in failing to grant her a stay based on the Servicemember Civil Relief Act.[1] We affirm.

We have carefully reviewed the record on appeal, including the substantial record from the district court, the law and facts as related in the appellate briefs of the parties, and the Order granting Defendant's motion for summary judgment signed by the district court on March 26, 2007. As for Mayeaux's assertion that the district court applied the wrong standard in testing the summary judgment evidence for pretext after concluding that Mayeaux had made a prima facie case and that CCISD had proffered a legitimate, non-discriminatory reason for not renewing her employment contract, we simply find no error in the handling of that issue by the district court. In

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precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

[1] 50 U.S.C. App. § 522(b).

its opinion, the district court painstakingly laid out the facts presented by CCISD and those presented by Mayeaux on each of her specific allegations of pretext and reached conclusions on each, with which we agree. In short, each of the particular deficiencies claimed by Mayeaux were shown by CCISD to be valid and Mayeaux's evidence to the contrary was insufficient to create a genuine issue of material fact. The district court applied the correct standard in reaching its summary judgment conclusion. We affirm the court's dismissal of Mayeaux's action with prejudice for essentially the reasons set forth by that court in its aforesaid Order.

Mayeaux's claim of error regarding the denial of a continuation is even more lacking in merit. Both original and successor counsel for Mayeaux were afforded more than sufficient time to conduct discovery, mediation, and all other pretrial activities, and additional postponements were made and time given based on the change in counsel for Mayeaux and on everything else required in advance of summary judgment (as distinguished from trial, which would have been sufficiently postponed had trial been required). Given the chronology of all that happened in the district court, Mayeaux's claim that any harm or prejudice resulted from the district court's failure to grant additional extensions, delays, or postponements is not supported by the record.

The district court's summary judgment in favor of CCISD, dismissing Mayeaux's action with prejudice, and all other rulings of that court, are, in all respects,

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

ROMONA MAYEAUX,	§	
	§	
Plaintiff,	§	CIVIL ACTION
v.	§	NO. G-05-CV-262
CLEAR CREEK INDEPENDENT SCHOOL DISTRICT,	§	
	§	
	§	
	§	
Defendant.	§	

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Romona Mayeaux brings this action against Defendant Clear Creek Independent School District ("CCISD" or "Defendant") alleging that CCISD violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 *et seq.*, and 42 U.S.C. §§ 1981, 1983 by discriminating on the basis of race. Now before the Court is Defendant's Motion for Summary Judgment and Plaintiff's Response thereto. The Court concludes that Defendant's Motion is well taken, and it is **GRANTED**.[1]

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[1] The Court does not consider this Order worthy of publication. Accordingly, it has not requested and does not authorize publication.

I. Background

Plaintiff began her employment with CCISD as a special education teacher at Creekside Intermediate School ("Creekside"). She worked for CCISD for the 2002-03 school year under a one-year probationary contract. Plaintiff received a one-year contract for the 2003-04 school year. Plaintiff's contract was not renewed the next year, and it is that nonrenewal that forms the basis of this lawsuit.

As a special education teacher, Plaintiff's major job duties included planning programs of study to meet individual students' needs, developing classroom rules, creating a classroom environment conducive to learning, and working with students struggling with social skills. During the fall of the 2002-03 school year, Plaintiff's classroom had only one student. In the spring of that year, Plaintiff was given an additional class which included between four and eight students. Near the end of Plaintiff's first year, Creekside assistant principal, Mandy Kyle ("Kyle") noted problems with Plaintiff's classroom management. At that time, Kyle indicated that CCISD would pay for Plaintiff to attend relevant training seminars over the summer.

Plaintiff claims that during the 2002-03 school year, she was evaluated one time, when Kyle performed a walk through observation. The results of that evaluation were allegedly returned to Plaintiff in an untimely manner, and she did not have an appropriate chance to respond.

At the beginning of the 2003-04 school year, Kyle and Creekside principal, Peter Caterina ("Caterina"), met with Plaintiff to discuss student safety, students' schedules, and Plaintiff's previous noncompliance with special education laws. Plaintiff was instructed not to deviate from the students' schedules, not to leave the classroom unattended, and not to take students with her to take care of other teaching responsibilities which could be taken care of during non-instructional time. Kyle also told Plaintiff that she needed to attend all special education department meetings and she needed to update her students' individual education plans ("IEPs") in a timely manner.

During her second year, Plaintiff's supervisors devised a written improvement plan called a "Teacher in Need of Assistance" plan in order to improve Plaintiff's performance. The plan included the above-mentioned requirements along with requirements that Plaintiff attend special workshops and observe other teachers. Plaintiff later attended two such workshops. Plaintiff alleges that the implementation of the Teacher in Need of Assistance Plan was not in compliance with applicable regulations. Specifically, Plaintiff argues that the Texas Education Agency only provides for growth plans if a teacher is rated less than proficient in two domains, which Plaintiff was not.

Despite this intervention, Plaintiff continued to have performance issues. CCISD claims that Plaintiff did not follow students' schedules, did not attend

required meetings, did not attend staff meetings, failed to implement appropriate behavior systems, failed to manage inappropriate student behavior, failed to take attendance, failed to report grades, maintained an antagonistic teaching style, failed to provide instruction, used her cell phone during instruction time, and received many parental complaints. Additionally, her students experienced a high rate of failure. As a result of these deficiencies, which Plaintiff contests, Plaintiff was transferred to another campus, Hyde Elementary. At Hyde, Plaintiff served as a permanent substitute teacher with no change in salary or benefits.

In March, 2004, CCISD administration recommended nonrenewal of Plaintiff's contract. Plaintiff requested a nonrenewal hearing. During Plaintiff's non-renewal hearing, two of Plaintiff's teacher aides testified that Plaintiff had paid them to complete her lesson plans for her, had failed to implement behavior programs, had violated terms of students' IEPs, and had spent sixty percent of her day on her cell phone. The school board voted 6 to 1 in favor of the proposed nonrenewal. Plaintiff now claims that the nonrenewal was discriminatory, and that she was terminated because she is African-American.

II. Legal Standard

Summary judgment is appropriate if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *See* Fed. R.

Civ. P. 56(c); *see also Celotex Corp. v. Catrett,* 477 U.S. 317, 323, 106 S. Ct. 2548, 2552-53, 91 L. Ed. 2d 265 (1986). The party moving for summary judgment bears the initial burden of "informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." *Celotex,* 477 U.S. at 323, 106 S. Ct. at 2553. The non-moving party must come forward with "specific facts showing there is a genuine issue for trial." Fed. R. Civ. P. 56(e); *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986). "'If the movant bears the burden of proof on an issue . . . [it] must establish beyond peradventure *all* of the essential elements' of the claim or defense." *Chaplin v. NationsCredit Corp.,* 307 F.3d 368, 372 (5th Cir. 2002) (citing *Fontenot v. Upjohn Co.,* 780 F.2d 1190, 1994 (5th Cir. 1986)). The court must view all evidence in the light most favorable to the non-movant. *See, e.g., Broussard v. Parish of Orleans,* 318 F.3d 644, 650 (5th Cir. 2003). If the evidence would permit a reasonable fact finder to find in favor of the non-moving party, summary judgment should not be granted. *See Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986).

Plaintiff's discrimination claims are governed by the burden-shifting framework initially set out by the Supreme Court in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). *See Bryan v. McKinsey & Co., Inc.,* 375 F.3d 358 (5th

Cir. 2004); *Roberson v. Alltel Info. Serv.*, 373 F.3d 647 (5th Cir. 2004).[2] To succeed on her claim, Plaintiff must first establish a *prima facie* case of unlawful discrimination. *Id.* If Plaintiff proves her *prima facie* case, she is entitled to a presumption of discrimination. The burden then shifts to CCISD to articulate a legitimate, non-discriminatory reason for Plaintiff's discharge. *Id.* If CCISD is able to offer such, Plaintiff must then offer sufficient evidence to create a genuine issue of material fact that the defendant's proffered reasons are pretextual. *See Shackelford v. Deloitte & Touche, LLP,* 190 F.3d 398, 404 (5th Cir. 1999).

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[2] CCISD's briefing states that Plaintiff's claims should be governed by the modified *McDonnell Douglas* approach set out in *Rachid v. Jack in The Box,* 376 F.3d 305 (5th Cir. 2004). However, the modified approach is only applicable to mixed-motive cases. *See Roberson,* 373 F.3d at 651. Plaintiff does not plead a mixed-motive case in her Complaint, and does not argue one in her Response to Defendant's Motion for Summary Judgment. However, for the sake of completeness, the Court finds that Plaintiff's claims fail under the modified approach set out in *Rachid. Rachid* allows a plaintiff to survive summary judgment by showing that there is a question of fact such that a reasonable jury member could find that "the defendant's reason, while true, is only one of the reasons for its conduct, and another 'motivating factor' is the plaintiff's protected characteristic." *See Rachid,* 373 F.3d at 312 (citing *Rishel v. Nationwide Mut. Ins. Co.,* 297 F. Supp. 2d 854, 865 (M.D.N.C. 2003)). Plaintiff does not even argue this, and the evidentiary record before the Court does not support it. Even under a mixed-motive analysis, Plaintiff's claims fail.

To establish a *prima facie* case of discrimination, Plaintiff must establish that she (1) is a member of a protected class; (2) was qualified for the position; (3) was subject to an adverse employment action; and (4) was replaced by someone outside the protected class, or that people outside the protected class were treated more favorably. *See Okoye v. Univ. of Tex. Houston Health Sci. Ctr.*, 245 F.3d 507, 512-13 (5th Cir. 2001).

III. Analysis

A. Plaintiff can establish a prima facie case of discrimination.

CCISD concedes that Plaintiff is a member of a protected class (Africa-American), holds the basic qualifications required for the position (state certification), and was subject to an adverse employment action (termination). However, CCISD claims that Plaintiff does not meet the fourth prong of the test since she has not shown that other similarly situated employees outside of the protected class were treated more favorably. While the Court makes no judgment regarding the accuracy of this claim, it finds that CCISD has applied the wrong standard to the fourth prong of Plaintiff's *prima facie* case. Specifically, Plaintiff need only show that she was replaced by someone outside the protected class to meet the fourth prong. *See id.* Plaintiff has offered deposition testimony that she was replaced by someone named Adelaide Socki, and the Court finds this evidence credible. However, there is no mention by either side

of Adelaide Socki's race, so it is impossible for the Court to determine if Ms. Socki is indeed outside the protected class. Since the Court must view all facts in the light most favorable to Plaintiff, it assumes, for purposes of this Motion only, that Ms. Socki is outside the protected class. Accordingly, Plaintiff meets the fourth prong, and has established a *prima facie* case of discrimination.

B. Defendant has articulated a legitimate non-discriminatory reason for Plaintiff's termination.

Plaintiff concedes that Defendant has articulated a legitimate non-discriminatory reason for her termination. Defendant has adequately argued that Plaintiff showed poor job performance during here employment with CCISD.

C. Plaintiff cannot show that Defendant's legitimate non-discriminatory reasons for termination were pretextual.

Ultimately, Plaintiff's case fails because she is unable to present evidence that would permit a reasonable factfinder to conclude that Defendant's legitimate nondiscriminatory reasons for termination were pretextual. In this phase of the *McDonnell Douglas* burden shifting framework, Plaintiff must "substantiate [her] claim of pretext through evidence demonstrating that discrimination lay at the heart of the employer's decision. . . . If the plaintiff can show

the employer's asserted justification is false, this showing, coupled with a prima facie case, may permit the trier of fact to conclude that the employer discriminated against the plaintiff without additional evidence." *Price v. Fed. Express Corp.*, 283 F.3d 715, 720 (5th Cir. 2002) (citing *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 148, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000)).

In this case, Plaintiff attempts to show that all of Defendant's proffered reasons for termination were false. However, Plaintiff does not present any substantiated evidence to support these claims. Rather, she simply disagrees. The Court will briefly discuss each of Defendant's proffered reasons addressed in Plaintiff's briefing.

1. Failing to Implement a Point System

CCISD claims that Plaintiff never properly implemented an adequate behavior incentive program, or point system, in her classroom as instructed. Plaintiff claims that she had a point system (which Defendant does not dispute) but presents absolutely no evidence that the point system was appropriate and in line with the requirements that were expected and previously discussed with her. On the other hand, Defendant presents sworn testimony from Kyle that is substantiated by identical testimony from two of Plaintiff's classroom aides. *See* Nonrenewal Hr'g Tr. at 101:1-102:25, 141:19-25, 192:1-10. The Court finds that CCISD's evidence on this issue is so convincing

that no reasonable factfinder could find that this accusation was pretextual.

2. Allowing Students to Misuse the Library

CCISD claims that Plaintiff inappropriately allowed students to go to the library with no supervision, no assignment, no hall pass, and for multiple periods. This is substantiated by testimony from the school's librarian. *See id.* at 195-201. Plaintiff offers no evidence contradicting the librarian's testimony. She merely states that teachers were allowed to send up to three students at a time to the library, and she never sent more than three students. Plaintiff does not even attempt to disprove the other allegations. Since Plaintiff has not cited evidence to rebut several of Defendant's allegations on this point, the Court finds that she has failed to present a question of fact which would allow a factfinder to determine that this proffered reason for termination was pretextual.

3. Improperly Restraining a Student

Based on the testimony of a student followed by an investigation and an alleged admission from Plaintiff herself, CCISD alleges that Plaintiff physically restrained a student in violation of District policy and then failed to report it as required. *See id.* at 237-240. Plaintiff denies that she restrained the student and denies that she admitted restraining a student. While the Court does not necessarily adopt CCISD's version of the facts surrounding the

restraint incident, it is convinced that CCISD reasonably believed its version of the facts. CCISD conducted a formal investigation with interviews of all relevant parties and concluded that Plaintiff improperly restrained the student. "The question is not whether an employer made an erroneous decision; it is whether the decision was made with discriminatory motive." *Mayberry v. Vought Aircraft Co.*, 55 F.3d 1086, 1091 (5th Cir. 1995). Given the thorough investigation made by CCISD into the incident, no reasonable factfinder could find that it acted with a discriminatory motive, even if he found that CCISD was wrong about the way the incident happened.

4. Misusing Aides

Defendant claims that Plaintiff misused her aides by paying them to do her work and otherwise requiring them to do work that she should have been doing. This is clearly supported by testimony from the aides themselves. *See id.* at 139:13-23, 141:19-25, 154:11-25. Plaintiff denies this, but offers no evidence in support. Her only response is that she leant money to her aide who was in dire financial circumstances. She does not even address the allegation that she had other people doing work for her, and therefore, does not present a question of fact as to whether the allegation was pretextual.

5. Improperly Altering Students' Schedules

According to the District, Plaintiff improperly altered students' schedules by not allowing them to go to required classes, such as art or physical education, based on poor behavior in her class. This is unacceptable since the education plans for special education students are highly regulated by the State. Plaintiff only responds to the schedule of one student claiming that the counselor approved the change. Again, Plaintiff does not even address the multiple infractions alleged by Defendant and therefore does not present a question of fact as to whether the allegation was pretextual.

6. Receiving Numerous Parent Complaints

Defendant alleges that it received complaints from at least three parents, two of whom threatened to report special education violations to the Texas Education Agency. Plaintiff argues that she only had one parent complaint and that many parents at the Nonrenewal Hearing spoke on her behalf. The allegation pertaining to parent complaints devolves into what is essentially a swearing match. Since the Court looks at all facts in a light most favorable to Plaintiff, it finds that on this issue, Plaintiff has presented a question of fact as to whether there were in fact multiple parent complaints, and therefore whether Defendant's reason was pretextual.

7. Showing Poor Student Performance

Defendant argues that one of the reasons for Plaintiff's nonrenewal was poor student performance. Namely, five out of eight of Plaintiff's students failed. Plaintiff asserts that this is incorrect. She says that all of her students passed but that Kyle conspired with Plaintiff's aide to change the grades of Plaintiff's students. She does not corroborate this assertion with any evidence. If CCISD reasonably believed that Plaintiff's students were failing, even if they in fact were not, this is enough to show that the allegation is not pretextual. As noted above "[t]he question is not whether an employer made an erroneous decision; it is whether the decision was made with discriminatory motive." *Mayberry* 55 F.3d at 1091. Based on the fact that the District's computer database showed failing grades for Plaintiff's students (which Plaintiff admits), it was reasonable for CCISD to believe that Plaintiff's students were failing.[3]

IV. Conclusion

Any one of the above-listed allegations would qualify as a legitimate non-discriminatory reason for

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[3] The Court has discussed only those allegation made by CCISD which Plaintiff has chosen to dispute. Plaintiff does not address CCISD's allegations (all of which are supported by competent summary judgment evidence) that she did not attend required meetings and talked on her cell phone for long periods of time. Accordingly, the Court finds that Plaintiff has not made a showing that these reasons were pretextual.

termination. Therefore, in order to survive summary judgment, Plaintiff would need to present at question of fact regarding the alleged pretextual nature of each one. As noted above, Plaintiff has only presented a fact question regarding one of the allegations – the existence of numerous parent complaints. Accordingly, Plaintiff has not successfully shown that there is question of fact on which reasonable minds could differ regarding all of Defendant's legitimate nondiscriminatory reasons for nonrenewal.

Defendant's Motion for Summary Judgment is **GRANTED.** Plaintiff's claims are **DISMISSED WITH PREJUDICE.** A Final Judgment will be entered in due course. In the next twenty (20) days, Defendant is invited to submit a Motion for Attorneys' Fees and Expenses, to which Plaintiff is **ORDERED** to respond within twenty (20) days of the filing thereof. At that time, the Court will rule thereupon and will consider the awarding of costs, fees, and expenses, as it perceives this case to have been brought in virtually total disregard of the facts and law germane hereto, which most certainly should not be borne by the Defendants' taxpayers.

IT IS SO ORDERED.

DONE this 26th day of March, 2007, at Galveston, Texas.

/s/ Samuel B. Kent
Samuel B. Kent
United States District Judge

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 08-40012

ROMONA RENA MAYEAUX

Plaintiff-Appellant

v.

CLEAR CREEK INDEPENDENT SCHOOL DISTRICT

Defendant-Appellee

- -

Appeal from the United States District Court for
the
Southern District of Texas, Galveston

- -

ON PETITION FOR REHEARING

(Filed Jul. 15, 2008)

Before WIENER, GARZA and BENAVIDES, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

ENTERED FOR THE COURT:

/s/ [Illegible]
United States Circuit Judge

APPENDIX D

From: Romona Mayeaux
To: Kyle, Mandy
Date: 11/21/2003 2:16:16 PM
Subject: Re: Point System

Mandy,

These are the rewards that we use in our class as an incentive for great behavior and academic progress too:

* 5 minutes free time (sometimes 10 minutes – head on desk time – take a nap)
* PS2
* Chess
* computer games
* [illegible]e library time
* time with remote control cars
* darts
* brain quest
* math quest
* radio/cd listening time while you are working (earphones)
* drink water from their own cup (at desk while working)
* lay on the floor and work

* time in the hall to work alone

* time in the library to work alone

Thank you very much,
Romona Mayeaux

>>>Mandy Kyle 11/19/2003 3:36:38 PM>>>
Ramona,

As I mentioned in our meeting yesterday, I would be glad to help you with the point system in your classroom. Could you make a copy of the list of rewards that you use in the classroom? I'll come up with a draft and we can meet at later date to change it into a final draft.

It would be a good idea to have the kids list some things enjoy having as a reward.

Thanks!

Mandy Kyle
Assistant Principal
Creekside Intermediate
(281) 332-8494

NEW POINT SYSTEM

Movement UP the Level System

Students begin on Level 1:

Requirements to move to Level 2:
Students must earn 25% (1-9 points) of possible class points for 5 days (not consecutive).

Requirements to move to Level 3:

Students must earn 50% (10-18 points) of possible class points for 10 days (not consecutive)

Requirements to move to Level 4:

Students must earn 75% (19-27 points) of possible class points for 10 days (not consecutive)

Requirements to move to Level 5

Students must earn 90-100% (28-35) of possible points for 20 ***consecutive*** days.

Movement DOWN the Level System

- Any violent physical action toward student or teacher:
  Beginning of Level 1
- Any significant damage of property of school or others:
  Beginning of Level 1
- Any threat of severe harm:
  Beginning of Level 1
- Any voiced threats or threatening gestures:
  Beginning of previous level or beginning of level 3, whichever is ***lower***

TWO CONSECUTIVE DAYS WITH LESS THAN 70% OF POSSIBLE POINTS:

DROP BACK TO LEVEL

***Movement down the Level System does not preclude other consequences for these behaviours.**

LEVEL SYSTEM:

Level 1:

Student must:

Remain in assigned area unless receiving permission to leave area.
Have escort outside of classroom (shadow or direct escort)
(No computer privileges unless directly related to current academic need.)

Level 2:

Same as previous level, but including:

Computer privileges as reward choice (No internet)
(No escort required by level, but escort would continue in directed by ARD or due to safety issues of the students.
Drink water from their cup
Lay on the floor and work

Level 3:

Same as previous levels, but including:

Rolling chair for daily use for a class of choice
Internet use for assignments (must be directly supervised)
Math quest
Brain quest
Computer games
Free library time

Level 4:

Same as previous levels, but including:

Five (5) minute free (sometimes 10 minutes – head on desk to gather thoughts)
Chess
Radio/cd listening time while you are working (earphones)

Level 5

Same as previous levels, but including:

Opportunity to study/complete some assignments outside
PS2
Darts
Time in the library to work alone
20 consecutive days at this level with a total of points between 190 and 210 per day, student will be ARD'ed into a less restrictive class for one per period.

Notes on Daily Point Sheet

(This does not replace the documentation for each students' BIP.

Marks on this behavior chart do not preclude other consequences from teacher or office.

We do special group rewards. When the students (as a group) are on task, working independently, some says a kind word, helps out another student without being asked, they are allowed to pull a number from a bag

and place it on the BINGO CHART. . . . Once they fill the chart (either 4 corners, diagonal, black out or a straight row) they are rewarded as a group with a majority ruled party.

Students who remain on Level 1 for 2 or more days or students who engage in behavior that is disruptive to the rest of the class, may be assigned to complete their work in an isolated area.

APPENDIX E

STATE OF TEXAS
GALVESTON COUNTY

AFFIDAVIT OF LaTarsha Lloyd

On this day, LaTarsha Lloyd appeared before me, the undersigned notary public. After I administered an oath to her, upon her oath, she said:

1. "My name is LaTarsha Lloyd. I am competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. During the school term of 2003-2004, and during a track practice that took place somewhere around January-March of 2004, I had the opportunity to speak with Mrs. James. We became friends during the course of this year where we often had lunch at together at school because I brought lunch for my daughter and sometimes for her as well.

3. She, at on [sic] point, told me that she was going to get a coaching position as a track coach. And, she was excited about coaching my daughter because she was a National Champion in the Junior Olympics and had heard a lot about her.

4. During one afternoon at practice, Mrs. James approached me and we began talking about a lot of things. In that conversation she indicated that she was in school and had a guaranteed job because she had assisted Peter Catherina and Amanda Kyle in altering some documents against a teacher at the

school. I voiced my disbelief and advised her against it. But, she said that it was already done.

5. Mrs. James told me that she had changed some grades that the Teacher had put in and that Pete and Amanda had written up a document and told her to sign it. I again advised Mrs. James that she had better not do that because it would come back on her.

6. In the conversation, Mrs. James said that the teacher was Ms. Mayeaux. I did not know who that teacher was at the time.

7. I shared this information with my Mother and she then told me who Mrs. [sic] Mayeaux was.

8. I was called as a witness in the case between Ms. Mayeaux and Clear Creek Independent School District School Board hearing. I was telling all of the information Mrs. James confided to me and the School Board lawyer told me to continue and then Mr. Bradshaw objected and I was not allowed to continue.

9. I work at Encore Health Services as a Contract Nursing Consultant and I am a business owner.

/s/ LaTarsha Lloyd
LaTarsha Lloyd
Name of affidavit

SWORN TO and subscribed before me by LaTarsha Lloyd on 12 August, 2007.

by /s/ Richard Taylor Sr.

[SEAL] RICHARD TAYLOR, SR.
MY COMMISSION EXPIRES
JUNE 10, 2009

APPENDIX F

From: "Romona Mayeaux" <rmayeaux@ccisd.net>
To: "Mandy Kyle" <MKYLE@ccisd.net>
Date: 09/20/2003 4:56:12 PM
Subject: Re: See attached

Mandy,

I will call the parent next time to make an appointment but because of the students immediate misbehavior, I thought it would be prudent to act right then at that particular time. . . . It will not happen again. . . .

Thanks for your consideration,
Romona

>>> Mandy Kyle 09/12/2003 2:34:44 PM >>>
As we discussed in my office yesterday, you are to attend scheduled meetings unless approved by Pete or me. In the future, you could call the parent at another time to discuss the situation and attend the special education meeting so that you receive updates and information on special ed. procedures. Thank you. :)

Mandy Kyle
Assistant Principal
Creekside Intermediate
(281) 332-8494

>>> Romona Mayeaux 09/11/03 02:24PM >>>
Mandy,

Per your MEMO on ensuring that I attend all meetings except those o.k.'ed by yourself or Mr. Caterina.

I had a situation on Sept. 8th during class with my new student CB.. He was non compliance all day. I instructed him to work and comply according to his IEP. He was given extra time, 5 minutes to – "gather his thoughts" but nothing at that time seemed to work . . . Everything was documented. . . . Mrs. Rxxxx informed me that Mr. Bxxxx was gone 2-3 weeks out of the month and care of Cxxxxx was left with Cxxxx's older brother and sister. When I saw that Mr. Bxxxx was the person picking up Cxxxxx, I took the opportunity to speak with him about Cxxxxx' behavior (talking back, non compliance, and refusal to work) . . .

I know that I was given a "directive", but a "spur of the moment" situation came up and I made a quick and informed decision (I hope the best decision for the child) about his son's success in the SD program. . . .

If a situation like this occurs again, what would you have me to do? This was not a situation that I could have gotten "pre permission". How should I handle the situation better as to comply with what I was told to do. . . . Any suggestions that you can give me would help very much. . . .

Thank you for your time and consideration

Romona Mayeaux

>>> Mandy Kyle 09/08/2003 8:03:03 PM >>>
Per your requests, documents will be sent to you via email.

Please see the attached documents, changes have been made on the Professional Intervention Plan per your request.

APPENDIX G

PROFESSIONAL PERSONNEL ACTION NOTICE

I RECOMMEND: MAYEAUX (Last) ROMONA (First) R. (MI) — xxx - xx - xxxx (Social Security Number)

PRINCIPAL/ADMINISTRATOR: _____ (Signature) SCHOOL/DEPT: Creekside – 046 DATE: 12-5-2003

EMPLOYMENT

___ Teacher ___ Teacher/Coach
___ Adm. ___ Other

Teaching Assignment _____
Adm. Assignment _____
Coaching Assignment _____
School _____

BEGINNING DATE _____

TERM:
_____ 187 Days _____ Other

CONTRACT:
_____ Regular _____ One Year Only
_____ Part-Time _____ Other
_____ Remainder of Current Year

VACANCY DUE TO:
_____ New Position _____ Transfer
_____ Resignation _____ Retirement
_____ Leave of Abs. _____ Other

OF: _____ (Name)

Last Day of Employment _____

Is Applicant a TRS Retiree? Yes ___ No ___

APPLICANTS INTERVIEWED:
Name Date
_____
_____

CHANGE

_____ Transfer
_____ Change of Assignment
__X__ Administrative Transfer
_____ Intra School Transfer
_____ Change in Hours/Duties, Stipend, etc.

EFFECTIVE DATES: From 12-8-03 to _____

FROM:
Site Creekside – 046
Assignment Special Ed. / Coach track / xcntry / vball

TO:
Site Hyde Elem.
Assignment Special Ed. Aide/
Paid As Teacher /s/ Norma Durdin
For 2003-2004 School Year Only

REASON:
_____
_____
_____

REPLACEMENT FOR:
Name _____
Assignment _____

SEPARATION

_____ Resigned
_____ Retired
_____ Terminated
_____ Other

LAST DAY ACTIVELY AT WORK: _____
Site _____
Assignment _____
Reason: _____

LEAVE OF ABSENCE ONLY

Type of Leave: _____
Start Date: _____
Anticipated Date of Return: _____
Date of Return: _____
Reason: _____

For Personnel Use Only

__✓__ Accepted Position
_____ Declined Position

Comments:

G2

/s/ Lynn [Illegible]	12/8/03			/s/ C Stout	12-9-03
Division Director	Date	Principal/Administrator	Date	Personnel Administrator	Date

/s/ [Illegible] 12/8/03

Certification	/s/ JA3 Jody Saturn [Illegible] Document	Reference Check	Crim Check	Winocular	Pinnacle	Notify Sending Principal